

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
WALTER DUANE WHITE,

Plaintiff

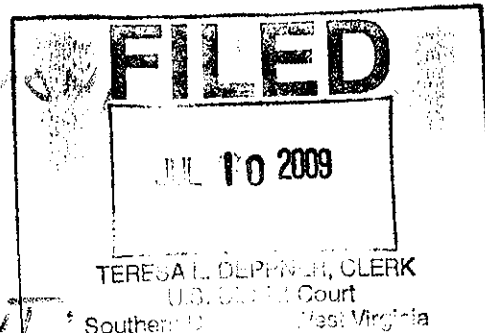
v.

CIVIL ACTION NO.: 5:09-0797

JURY TRIAL DEMANDED

DOMINIC McLAIN, D.O., CLINIC DIRECTOR,  
HEALTH SERV. ADMIN. THOMPSON,  
ASSOCIATE WARDEN OPERATIONS PARMON,  
WARDEN BERKEBILE,

Defendants



BIVENS, COMPLAINT

### I. JURISDICTION:

This is a civil action authorized by BIVENS, 403 U.S. 388 (1971). Defendants are sued in their individual and official capacities. This civil action is to redress the deprivations, under color of law, of the rights secured by the Constitution of the United States. The Court has jurisdiction under 28 U.S.C. Section 1331 and 1343(a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202. Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. Section 2283 and 2284 and Rule 65 of the Federal Rules of Civil Procedure.

### II. VENUE:

The Southern District of West Virginia is an appropriate venue under 28 U.S.C. § 1391(c)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

III PLAINIFF:  
 Plaintiff, Walter Duane White, is and was at all times mentioned herein a prisoner of the Federal Bureau of Prisons in the custody and currently confined at Federal Correctional Institution - Beckley, P.O. BOX 1280 Beaver W Va 25813.

#### IV DEFENDANTS:

1. Defendant McLam is the clinic director for F.C.I. BECKLEY. He directs the health service clinic and has day to day care for the Plaintiff.

2. Defendant Thompson is the Health Service Administrator for F.C.I. BECKLEY. He is legally responsible to administrate the health service.

3. Defendant Trauman is the Associate Warden Operations for F.C.I. BECKLEY. He is legally responsible for the operations of all the departments of F.C.I. BECKLEY, including the Health Service Department.

4. Defendant Berkebile is the warden at F.C.I. Beckley. He is legally responsible for the operation of F.C.I. BECKLEY and for the safety and welfare of all the inmates of that prison.

5. Each defendant is sued individually and in his official capacity. At all times mentioned in this complaint each defendant acted under color of law.

#### V FACTS

Plaintiff is Hepatitis C positive and has antibodies from an unknown etiology associated with this + Rheumatoid Factor (R.F.) and + Human Leukocyte antigen B-27 and the associated chronic, debilitating pain of the face, legs, back, pelvic area and joints associated with it.



On 2/5/09 Plaintiff's Attorney, Dr. [Name] a Physician U.S.P. CANAAN submitted a S.B.P. 5770.060 MEDICAL/SURGICAL AND PSYCHIATRIC REFERRAL REQUEST (See Exhibit 1) because of Plaintiff's multiple conditions his medical needs could not be taken care of because lack of specialists i.e. Rheumatologists, Pain Specialists, and Urologists. Plaintiff because of his multiple serious medical needs has trouble with his daily living activities and is vulnerable to injury, assault and victimization. Plaintiff needs to be at a facility that can care for his serious medical and the staff and the facility here at FCI BECKLEY is inadequate to care for such serious medical needs.

Plaintiff had been taken pain medication two (2) Tylenol 35 3x5 a day since September along with 1 IBUPROFEN 600'S 3x5 a day and it was barely enough to control Plaintiff's pain. (See S.B.P. 5770.060 Exhibit one under CURRENT MEDICATION). Plaintiff had been taking this medication for ten (10) months hence the need for a pain specialist.

Plaintiff arrived at FCI BECKLEY 4/6/09. On THUR. 4/7/09 without seeing Plaintiff Defendant Mc Lain discontinued all of Plaintiff's pain medication. On THUR. 2/5/09 Plaintiff had an appointment to see Defendant Mc Lain, because Plaintiff went to sick call that Monday. Plaintiff complained of the chronic debilitating pain associated with his conditions and asked about his pain medications. Defendant Mc Lain stated, "That's a controlled substance and you won't be getting that here" thereby refusing to give medication or treatment to eliminate the Plaintiff's pain and suffering at least temporary. Defendant

McGinnis, M.D. Doctor of Osteopathy. Plaintiff is a medical Doctor (M.D.). Such doctors do not believe in prescribing medicines or using modern diagnostic procedures. They are only knowledgeable in musculoskeletal (chronic action). If you have trouble with your musculoskeletal this is fine but they do not have the training or qualification to handle serious medical needs. (Plaintiff's Hepatitis C, Rheumatoid illness and the associated chronic debilitating pain of his chronic prostatitis). These facts is well known in the medical community. Defendant McGinnis sets treatment policy along with the other defendants.

Plaintiff sent "Cop-outs" to defendants Thompson, Harmon, and Berkebile stating that Plaintiff needed treatment for his serious medical needs and if the staff and facility cannot care for his serious medical needs and associated chronic and debilitating pain to put in for a B.P. \$77500 transfer request to a facility that can. In the Inmate information handbook it states that a "Cop-out" should have a response in 5 days. Plaintiff has not received any response. His complaints are being ignored and he considers a lack of response a denial. The defendants are acting in the face of known violations of written policy.

Plaintiff is suffering severe pain, faces irreparable harm and ongoing danger because of his untreated Hepatitis C and faces ongoing assault and victimization because of his conditions and has trouble with his daily living activities.

#### IV. EXHAUSTION OF LEGAL REMEDIES:

Plaintiff, Walter Duane White used the grievance procedure over the last four (4)



years and has exhausted these Administrative remedies #s 462945, 500548, and 500550 to try to solve the problem of treating his serious medical needs. Plaintiff Walter Duane White, presented facts to these Complaints, Plaintiff always got a response saying that his grievances had been denied. Plaintiff has already started his Administrative grievance process here at F.C.I. BECKLEY. Plaintiff is in the process of exhausting his available administrative remedies. He has sent "Cop-outs" to the defendants requesting care or if cannot be met transfer to a facility that can adequately care for his medical needs. He has also filed a B.P.E. Plaintiff is filing this Complaint and accompanying motion for Preliminary Injunction now to prevent irreparable injury as a result of defendants' ongoing violation of his Constitutional rights. See JACKSON V. D.C., 254 F.3d 262, 267-68 (2001). Plaintiff will immediately notify the Court and file an amended Complaint once all available administrative remedies have been exhausted.

#### VI LEGAL CLAIMS:

Plaintiff realleges and incorporates by reference sections I-IV.

The deliberate indifference to plaintiff's serious medical needs and the chronic, debilitating pain associated with them, violates Plaintiff's, Walter Duane White, rights and constitutes Cruel and Unusual Punishment under the Eighth Amendment to the United States Constitution.

The Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this Court

grants the injunctive and declaratory relief which Plaintiff seeks.

## VII PRAYER FOR RELIEF:

Wherefore Plaintiff respectfully prays that this Honorable Court enter judgement granting Plaintiff:

A declaration that the acts and omissions described herein violates Plaintiff's rights under the Constitution and laws of the United States.

A Preliminary injunction ordering defendant to adequately, properly treat Plaintiff's serious medical needs and give plaintiff adequate proper medications and treatment to eliminate his chronic debilitating pain associated with his serious medical needs and if the staff and facility cannot or will not meet these needs transfer Plaintiff to a facility that can.

Compensatory damages in the amount of \$100,000 against each defendant, jointly and severally.

Punitive damages in the amount of \$100,000 against each defendant.

Exemplary damages - damages given as an enhancement of compensatory damages because of the wanton, reckless, malicious and oppressive character of the acts complained of, and by way of punishment of the defendants and a deterrent to other.

Nominal damages - An award to which the Plaintiff is entitled, although he gives no evidence of any particular amount of loss, because the law infers damage from breach of an agreement or the invasion of a right.

Mental anguish - Mental suffering as distinguished from physical pain

Anxiety - but only on the occasion of about what may happen.

A jury trial on all issues triable by jury,  
Plaintiff's costs in this suit.

Any additional relief the court deems just  
proper and adequate.

VIII VERIFICATION:

Under penalty of perjury 28 U.S.C. § 1746  
I declare, state, verify, certify, that the foregoing  
is true, correct, complete, certain to the best of  
my belief, experience, and knowledge.

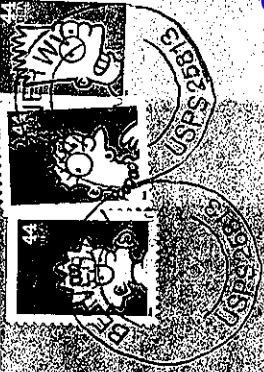
Respectfully submitted,

THUR. 02 JUL 2009  
Date

Walter Duane White  
WALTER DUANE WHITE, Pro-Se  
#05046087  
FEDERAL CORRECTIONAL INSTITUTION  
BECKLEY  
P.O. BOX 350  
BEAVER, WVA  
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CLERK, UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
110 NORTH HEBER STREET  
ROOM 119  
BECKLEY, WVA 25801

FEDERAL CORRECTIONAL INSTITUTION  
BECKLEY, WV  
P.O. BOX 1280  
BEAVER, WV 25813

DATE

7/20/09

THE ENCLOSED LETTER WAS PROCESSED THROUGH  
SPECIAL MAILING PROCEDURES FOR FORWARDING TO  
YOUR ATTORNEY. IT HAS BEEN NEITHER OPENED NOR  
INSPECTED. IF IT RAISES A QUESTION OR  
PROBLEM OVER WHICH THIS COURT HAS JURISDICTION,  
YOU MAY WISH TO RETURN THE JAILER'S  
FOR FURTHER INFORMATION OR CLARIFICATION. IF  
THE WRITER ENCLOSES CORRESPONDENCE FOR  
FORWARDING TO ANOTHER ADDRESSEE, PLEASE  
RETURN THE ENCLOSURE TO THE ABOVE ADDRESS.

LEGAL/SPECIAL MAIL